



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2010-0861; FRL-9945-95-Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the General Definitions for Texas New Source Review and the Minor NSR Qualified Facilities Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve and disapprove portions of revisions to the Texas State Implementation Plan (SIP) pertaining to the Texas New Source Review (NSR) program submitted on March 13, 1996; July 22, 1998; September 11, 2000; September 4, 2002; and October 5, 2010. Specifically, the EPA is proposing to approve the severable portions of the amendments to the General Definitions for the Texas NSR program, and the Minor NSR Qualified Facilities Program. The EPA is proposing to disapprove a severable portion of the General Definition of “modification of existing facility” submitted on October 5, 2010. We are taking these actions under section 110, parts C and D of the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2010-0861, at <http://www.regulations.gov> or via email to wiley.adina@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Adina Wiley, (214) 665-2115, wiley.adina@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, (214) 665-2115, wiley.adina@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Adina Wiley or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

A. The CAA and SIPs

The Act at Section 110(a)(2)(C) requires states to develop and submit to the EPA for

approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment/unclassifiable and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS – “attainment areas” – as well as areas where there is insufficient information to determine if the area meets the NAAQS – “unclassifiable areas.” The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS – “nonattainment areas.” The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source/major modification thresholds and thus do not qualify as “major” and applies regardless of the designation of the area in which a source is located. Any submitted SIP revision must meet the applicable requirements for SIP elements in section 110 of the Act, and be consistent with all applicable statutory and regulatory requirements. The EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR 51.160 through 51.166. Regulations specific to Minor NSR programs are contained in 40 CFR 51.160 through 51.164. Texas submitted the revisions to the General Definitions as revisions to the Texas SIP applicable to the entirety of the Texas NSR Program. The provisions specific to the Qualified Facilities Program have been submitted for inclusion in the State’s Minor NSR program.

B. Overview of the Revisions to the General Definitions for the Texas NSR Program

The General Definitions germane to the implementation of the Texas NSR Program are contained in the Texas Administrative Code (TAC) at 30 TAC Section 116.10. The October 5, 2010, submitted revisions include substantive revisions to the definition of “Best Available Control Technology (BACT)”, substantive revisions to the definition of “modification of existing facility”, deletion of definitions specific to the Minor NSR Qualified Facilities Program that have been moved to a new section for Qualified Facilities definitions, non-substantive edits to improve clarity throughout the definitions, and renumbering of the existing SIP-approved definitions to account for the other edits. On March 25, 2011, the TCEQ resubmitted the revisions to the General Definitions at 30 TAC Section 116.10 that were submitted on March 13, 1996; July 22, 1998; September 11, 2000; September 4, 2002. As such, the portions of these prior submittals that have not already been addressed by the EPA are before us for review.

C. Overview of the Texas Minor NSR Qualified Facilities Program

The Texas Minor NSR Qualified Facilities Program was authorized under Texas Senate Bill 1126, 74th Texas Legislature, to create a streamlined Minor NSR mechanism to authorize minor changes at existing facilities that are not subject to federal major source requirements under PSD or NNSR. The program authorizes changes at existing permitted facilities by allowing the participating facilities to trade permitted emission allowables. Changes at qualified facilities cannot result in the emission of an air contaminant not previously emitted, the construction of a new facility, a reduction in emission control efficiency, a net increase in allowable emissions, or any increases in actual emissions that exceed applicable major source thresholds.

D. Overview of the Texas Permit Renewal Requirements

Requirements for the renewal of air permits issued under 30 TAC Chapter 116 are provided under 30 TAC Chapter 116, Division D. The EPA has SIP-approved the majority of this division; the exception being the provision in 30 TAC Section 116.311 exempting changes authorized as a qualified facility from the requirement to obtain a permit renewal. The revisions remaining before us pertaining to Qualified Facilities were submitted to 30 TAC Section 116.311 on July 22, 1998 and September 4, 2002.

II. The EPA's Evaluation

A. *Revisions to the General Definitions for Texas NSR*

The TCEQ revised the General Definitions at 30 TAC Section 116.10 on September 5, 2010 and submitted these revisions for inclusion in the Texas NSR SIP on October 5, 2010. The TCEQ submitted a clarification letter to the EPA on March 25, 2011, that resubmitted prior rulemakings addressing the General Definitions at 30 TAC Section 116.10; specifically the rulemakings and records associated with SIP submittals dated March 13, 1996; July 22, 1998; September 11, 2000; and September 4, 2002. We note that the July 22, 1998 submittal repealed and replaced the March 13, 1996 submittal of 30 TAC Section 116.10. Therefore, the EPA has determined that the March 13, 1996 revisions to 30 TAC Section 116.10 are no longer before us for review. We are only addressing the pieces of the General Definition submittals that have yet to be finally acted upon by the EPA.

The EPA has taken several actions over the years to approve and disapprove specific components of the General Definitions into the Texas SIP. Our actions are dated August 28, 2007 (72 FR 49198); April 14, 2010 (75 FR 19468); and November 17, 2011 (76 FR 71260). The Technical Support Document (TSD) accompanying this proposal provides a detailed history of our past actions.

Today's proposal addresses the remaining submitted revisions to the General Definitions from July 22, 1998 through the current version of the General Definitions submitted on October 5, 2010. The following is a summary of the EPA's evaluation of the submitted revisions to the General Definitions.

- On October 5, 2010, the TCEQ submitted a substantive revision to the definition of "best available control technology (BACT)" at 30 TAC Section 116.10(1). The definition initially submitted on July 22, 1998 at 30 TAC Section 116.10(3) was disapproved by the EPA on September 15, 2010. *See* 75 FR 56424. On September 15, 2010, the TCEQ substantively revised the definition of "BACT" and submitted this revised definition for SIP approval on October 5, 2010 at 30 TAC Section 116.10(1). The revised definition of BACT at 30 TAC Section 116.10(1) clarifies how the TCEQ defines BACT for NSR permitting. The Texas SIP at 30 TAC Section 116.111(a)(2)(C) requires that BACT must be evaluated and applied to all facilities subject to the Texas Clean Air Act. Section 116.111(a)(2)(C) further clarifies that applications subject to PSD requirements under Title I Part C of the CAA must comply with the provisions of BACT as defined in the Texas SIP at 30 TAC Section 116.160(c)(1)(A). Thus, the Texas SIP has two definitions for BACT – the definition at 30 TAC Section 116.10(1) creates what is generally referred to as "Texas BACT" and will be applied to all Texas NSR permitting actions, major and minor. The "federal BACT" requirements are applied to PSD permits in accordance with the Texas PSD SIP. The EPA finds that the revisions to the definition of "BACT" at 30 TAC Section 116.10(1) are approvable.
- On October 5, 2010, the TCEQ submitted substantive revisions to the NSR definition of "modification of existing facility" at 30 TAC Section 116.10(9). The EPA has approved

portions of this definition into the Texas SIP, but we are proposing to act on the remaining components of this definition as initially adopted on June 17, 1998 and submitted July 22, 1998; as further revised through submittals dated September 11, 2000; September 4, 2002; and October 5, 2010. The EPA proposes to approve the outstanding provisions in the definition of “modification of existing facility” at 30 TAC Section 116.10(9) as submitted on October 5, 2010, as a portion of the Texas NSR program, with the exception of the severable subparagraph (F) as discussed below. Each subparagraph provides a Minor NSR mechanism by which a facility can be changed without a case-by-case Minor NSR permit amendment:

- 30 TAC Section 116.10(9)(A) provides for the use of permits by rule (PBRs) to be used for the insignificant increases of already authorized air contaminants. The EPA has SIP-approved the Texas PBR program under 30 TAC Chapter 106 as a component of the Texas Minor NSR program. As such, we find that use of a PBR for insignificant increases for an already authorized air contaminant should not be considered as part of the modification of an existing facility. We are proposing approval of this provision as initially adopted on June 17, 1998 and submitted on July 22, 1998; and further revised on September 15, 2010 and submitted on October 5, 2010.
- The current Texas SIP includes the definition of “modification of existing facilities” at 30 TAC Section 116.10(11)(C) and (D). On October 5, 2010, the TCEQ submitted non-substantive renumbering of these provisions to new 30 TAC Section 116.10(9)(B) and (C) as adopted on September 15, 2010. This non-substantive renumbering is approvable.

- 30 TAC Section 116.10(9)(D) establishes the criteria for a facility to become “qualified.” This definition is necessary for the implementation of the Texas Minor NSR Qualified Facilities Program and is therefore approvable under 40 CFR 51.160 as defining the scope of the Minor NSR program;
- 30 TAC Section 116.10(9)(E) is already SIP-approved with respect to flexible permits. *See* 79 FR 40666, July 14, 2014.
- 30 TAC Section 116.10(9)(F) provides for modifications to be made at natural gas processing facilities without a case-by case permit.¹ On November 17, 2011, the EPA disapproved the subparagraph (G) portion of the “modification of existing facility” definition at 30 TAC Section 116.10(11) as submitted on July 22, 1998 and further revised on September 4, 2002. We previously disapproved subparagraph (G) because it was not clearly limited to Minor NSR and we could not demonstrate whether this exemption met the anti-backsliding requirements of CAA 110(l). *See* 76 FR 71260. The TCEQ resubmitted this identical provision in the October 5, 2010 submittal, renumbered to be 30 TAC Section 116.10(9)(F), and we are reviewing the resubmitted subparagraph (F) as a new revision to the Texas SIP. The exemption provides that changes at certain natural gas processing, treating, or compression facilities are not modifications if the change does not result in an annual emissions rate of any air contaminant in excess of the volume

¹ Specifically, it exempts “a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline which does not result in an annual emission rate of any air contaminant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which: (i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only under Chapter 106 of this title; or (ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with TCAA, § 382.060, as that section existed prior to September 1, 1991.” 30 TAC section 116.10(9)(F).

for grandfathered facilities. The “annual emissions rate” is the same as the “volume emitted at maximum design capacity;” therefore, this would provide an exemption for those sources from permit review for any emission increases at these facilities. The requirements of 40 CFR 51.160(e) allow a state to identify facilities that will be subject to review under its Minor NSR program and require its Minor NSR SIP to discuss the basis for determining which facilities will be subject to review. The submitted definition at 30 TAC Section 116.10(9)(F), however, does not contain an applicability statement or regulatory provision limiting this type of change to Minor NSR. The TCEQ has not submitted any additional evidence to substantiate that this provision is only applicable to the Texas Minor NSR program. Further, the submittal does not include any explanation of the basis for exempting this type of change from the permitting SIP requirements. Without an analysis describing how this exemption does not negate the Major NSR SIP requirements and meets the Minor NSR SIP requirements in 40 CFR 51.160 and the CAA’s anti-backsliding requirements in section 110(l), EPA has no basis to approve this exemption. As such, we propose to disapprove subparagraph (F) consistent with our prior final action.

- On October 5, 2010, the TCEQ submitted a new definition of “qualified facility” at 30 TAC Section 116.10(14); this definition is necessary for the implementation of the Texas Minor NSR Qualified Facilities Program and is therefore approvable under 40 CFR 51.160 as defining the scope of the Minor NSR program.
- On October 5, 2010, the TCEQ also submitted non-substantive edits to the opening paragraph of the General Definitions to clarify an acronym and renumbering throughout

the section of the existing SIP-approved definitions: “dockside vessel,” “dockside vessel emissions,” “facility,” “federally enforceable,” “grandfathered facility,” “lead smelting plant,” “maximum allowable emissions rate table (MAERT),” “new facility,” “new source,” “nonattainment area,” “public notice,” and “source”. These non-substantive edits are approvable.

B. The Texas Minor NSR Qualified Facilities Program

On April 14, 2010, the EPA disapproved the Texas Qualified Facilities Program as submitted by the TCEQ on March 13, 1996; repealed and re-adopted on June 17, 1998, submitted on July 22, 1998; and revised on September 11, 2000 and September 4, 2002. *See* 75 FR 19468. In the final disapproval the EPA found that the Qualified Facilities Program was not approvable as a Minor NSR program and was not approvable as a substitute Major NSR program.

On October 5, 2010, the TCEQ submitted a revised Qualified Facilities Program to address the April 14, 2010, identified deficiencies. Our evaluation demonstrates that the TCEQ has appropriately limited the Qualified Facilities Program to Minor NSR by requiring that each proposed change conduct a separate applicability determination under PSD and NNSR to ensure no federal major source permitting requirements are circumvented. The Texas Qualified Facilities Program enables an existing permitted facility to increase allowable emissions, provided that another permitted facility has a corresponding decrease in permit allowable emissions; resulting in no net increase in permitted emission allowables.² Each of the facilities in

² Relying on permitted allowable emissions is appropriate for a Minor NSR permit program. The EPA has approved the Texas Minor NSR program as consistent with the federal requirements; therefore, the Texas Minor NSR program establishes allowable permit limits that are protective of the NAAQS and increment consistent with 40 CFR 51.160 – 51.164. The trading of these permitted allowables will not result in a net increase in permitted allowables.

the qualified transaction will have an existing permit authorized under the Texas NSR SIP at 30 TAC Chapter 106 (Permits by Rule (PBR)) or Chapter 116 (PSD, NNSR, Minor NSR, or standard permit). To ensure the changes in emission allowables will be enforceable, the Texas Qualified Facilities Program requires sources to document the transaction through the submittal of a P1-E form and to revise the underlying existing permits under the requirements of 30 TAC Section 116.111 or through a revision to the existing PBR registration at 30 TAC Section 106.6.³ The netting of emission allowables will not result in interference with attainment and maintenance of the NAAQS, reasonable further progress, increment or any other requirement of the CAA because each of the underlying permits, or PBR, was issued as protective of air quality. A qualified facility change may result in an increase in actual emissions, but this increase is already authorized under the existing permitted allowables. A qualified facility cannot be used to authorize the emission of a new air contaminant or the construction of a new source. Further, a qualified facility cannot be used to lessen the already required level of control technology in the existing permits or reduce the permitted monitoring and recordkeeping requirements. Because the Texas Qualified Facilities Program will not reduce existing permit requirements nor result in a net increase in allowable emissions from the existing permitted facilities, the EPA proposes to find that the program is approvable as a component of the Texas Minor NSR program for authorizing changes at existing facilities without a specific permit modification. We are also proposing to find that the Qualified Facilities Program is an enforceable component of the Texas Minor NSR program because it requires that the existing NSR authorizations for the participating

³ We note that all of the requirements of 30 TAC Chapter 106, Subchapter A (which includes 30 TAC Section 106.6) and any preconstruction requirements under 30 TAC Chapter 116 are applicable requirements under the Texas title V program at 30 TAC Chapter 122. The EPA is not making a change to the approval status of the part 70 program in Texas; rather we are noting that any permit revisions associated with a Qualified Facility transaction would also be part of the permit record for the source's title V permit.

facilities are revised to document the changes in permitted allowable emission rates and sources are required to maintain documentation quantifying the increases and decreases in actual emissions associated with the change and all information necessary to demonstrate no adverse air quality impact.

C. The Texas Permit Renewal Requirements

The EPA is also reviewing revisions to the Permit Renewal Application procedures at 30 TAC Section 116.311. The TCEQ initially submitted a revision on July 22, 1998, at 30 TAC Section 116.311(a)(1) to specify that changes authorized under a qualified facility are not subject to the permit renewal requirements under 30 TAC Chapter 116. This provision was renumbered in the September 4, 2002 submittal to 30 TAC Section 116.311(a)(2). Changes authorized under the Qualified Facilities Program are made enforceable by revisions to the underlying Chapter 116 permits or Chapter 106 PBR registration. Because there is not a specific permit issued for a Qualified Facility transaction, there is no “Qualified Facility permit” subject to permit renewal requirements. Rather, the underlying permits under Chapter 116 remain subject to the permit renewal requirements. Note that the permit renewal requirements at 30 TAC Section 116.311 do not apply to PBRs authorized under 30 TAC Chapter 106 or any portion of the Qualified Facility transaction authorized under 30 TAC Chapter 106. However, the federal regulations under the CAA do not require a permit renewal process for an approved NSR program. *See* 40 CFR 51.160-51.166.

Because a change authorized under the Qualified Facilities Program does not result in a specific permit modification, such a change is not subject to the permit renewal requirements because there is not a permit action to renew. However, the underlying permit terms remain subject to the applicable permit renewal requirements.

D. Evaluation under section 110(l) of the CAA

Under Section 110(l), the EPA cannot propose to approve a SIP revision that has not been developed with reasonable notice and public hearing. Nor can we propose to approve a revision that will worsen air quality. The October 5, 2010, submitted revisions to the Texas SIP were developed using the Texas SIP-approved process with adequate notice and comment procedures. Our analysis also indicates that the General Definitions, with the exception of the portion of “modification of existing facilities” pertaining to natural gas processing facilities, are necessary to implement the CAA required title I permitting programs in Texas. As such, these General Definitions will support the state’s air quality programs and will not interfere with attainment, reasonable further progress or any other applicable requirements of the CAA. Additionally, the Minor NSR Qualified Facilities Program establishes a mechanism to allow modifications at existing, permitted facilities to occur without a permit revision by requiring an increase in permitted emission allowables to be offset by a corresponding decrease in permitted emission allowables at the same facility. Because the facilities participating in the Qualified Facilities Program have been previously authorized under SIP-approved permitted mechanisms, the permitted emission allowables have been developed such that there is no interference with attainment, reasonable further progress or any other applicable requirement of this chapter. Therefore, the EPA proposes to find that approval and implementation of the Qualified Facilities Program will not result in degradation of air quality.

III. Proposed Action

Section 110(k)(3) of the Act states that the EPA may partially approve and partially disapprove a SIP submittal if we find that only a portion of the submittal meets the requirements of the Act. We are proposing to determine that the majority of the October 5, 2010 revision to the

Texas SIP is approvable because the submitted rules are adopted and submitted in accordance with the CAA and are consistent with the EPA's regulations regarding NSR and Minor NSR. Therefore, the EPA proposes to approve the following as a revision to the Texas SIP under section 110 and parts C and D of the CAA:

- Substantive and non-substantive revisions to the General Definitions at 30 TAC Section 116.10, as initially adopted on June 17, 1998 and submitted on July 22, 1998 and revised through the October 5, 2010 submittal, with the exception of 30 TAC Section 116.10(9)(F). Note that 30 TAC Section 116.10(5)(F) has not been submitted or proposed for inclusion in the Texas SIP.
- New section 30 TAC Section 116.17 establishing the definitions for the Minor NSR Qualified Facilities Program as adopted by the State on September 15, 2010 and submitted on October 5, 2010.
- Substantive revisions to 30 TAC Section 116.116(e)(1) – (e)(11) creating the Texas Minor NSR Qualified Facilities Program as adopted by the State on September 15, 2010 and submitted on October 5, 2010.
- New section 30 TAC Section 116.117 establishing the documentation and notification requirements for the Minor NSR Qualified Facilities Program as adopted by the State on September 15, 2010 and submitted on October 5, 2010. Note that 30 TAC Section 116.117(a)(4)(B) has not been submitted or proposed for inclusion in the Texas SIP.
- The SIP narrative titled “Revisions to the State Implementation Plan (SIP) Concerning the Qualified Facility Program as Authorized by Senate Bill 1126” as submitted on October 5, 2010.

- Revisions to 30 TAC Section 116.311(a)(2) as adopted by the State on June 17, 1998 and submitted on July 22, 1998; and further revised by the adoption of August 21, 2002 and the submitted on September 4, 2002.

The EPA's approval, if finalized, would not make federally enforceable any Qualified Facility actions that were authorized by the State before the EPA's final approval of the Qualified Facilities Program is effective. The EPA is also proposing, that upon the final approval of today's action, we will amend 40 CFR 52.2273(b) to reflect that the Texas Minor NSR Qualified Facilities Program is an approved component of the Texas SIP. We also are proposing to delete 40 CFR 52.2273(d)(1) because the EPA is now proposing approval of the general definition of BACT.

We are also proposing to disapprove the severable portion of the definition of "modification of existing facility" at 30 TAC Section 116.10(9)(F) pertaining to natural gas processing facilities as submitted on October 5, 2010. The EPA previously disapproved this provision on November 17, 2011. The state resubmitted the provision on October 5, 2010, unchanged with the exception of numbering and provided no additional evidence to substantiate inclusion in the Texas Minor NSR program or to address the anti-backsliding requirements under CAA section 110(l). As such, we continue to believe that this provision is not clearly limited to Minor NSR and should be disapproved as inconsistent with the requirements of section 110 of the Act and the EPA's regulations under 40 CFR 51.160 through 51.164 regarding Minor NSR. The provision in subparagraph (F) in the definition of "modification of existing facility" that we are proposing to disapprove was not submitted to meet a mandatory requirement of the CAA. Therefore, if the EPA takes final action to disapprove subparagraph (F), no sanctions or Federal Implementation Plan clocks will be triggered. *See* CAA section 179(a).

At this time the EPA is also proposing several unrelated corrections to the Texas SIP to accurately reflect recent federal final actions.

- We are proposing to correct 40 CFR 52.2270(c) to include 30 TAC Section 116.112 as part of the Texas SIP. On December 7, 2005, the EPA approved 30 TAC Section 116.112 – Distance Limitations as adopted by the TCEQ on January 14, 2004. *See* 70 FR 72720. As a result of this final approval, we included this provision in the table of EPA-Approved Regulations in the Texas SIP at 40 CFR 52.2270(c). 30 TAC Section 116.112 was inadvertently removed from 40 CFR 52.2270(c) due to a typographical error in later final rulemaking. We have taken no action to remove the Distance Limitation provisions at 30 TAC Section 116.112 from the Texas SIP; therefore, we are merely correcting a clerical error.
- The EPA is also proposing to correct 40 CFR 52.2270(c) to include the date and Federal Register citation for the EPA’s final approval of 30 TAC Section 116.760 into the Texas SIP. This section was included in our final approval of the Texas Flexible Permits Program on July 14, 2014; however, the table in 40 CFR 52.2270(c) does not include the date or citation of EPA’s approval. We are proposing to correct this inadvertent omission.
- Additionally, the EPA is proposing to delete 40 CFR 52.2273(d)(4)(viii) because of our March 30, 2015 final approval. *See* 80 FR 16573. We are also proposing to delete 40 CFR 52.2273(d)(5)(i) because of our February 14, 2014 final approval and 40 CFR 52.2273(d)(5)(ii) because of our April 1, 2014 final approval. *See* 79 FR 08861 and 79 FR 18183, respectively. As a result of the proposed deletions to 40 CFR 52.2273 described here, we will also consider renumbering this section to improve readability.

- Finally, we are proposing to clarify the SIP status of 30 TAC Section 116.110(c). This section was returned to the TCEQ on June 29, 2011, as it was inappropriately submitted for inclusion in the Texas SIP. As such, we propose to revise 40 CFR 52.2270(c) to specify that 30 TAC Section 116.110(c) is not in the SIP.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. There is no burden imposed under the PRA because this action merely proposes to approve state permitting provisions that are consistent with the CAA and disapprove state permitting provisions that are inconsistent with the CAA.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely proposes to approve state permitting provisions that are consistent with the CAA and disapprove state permitting provisions that are inconsistent with the CAA; therefore this action will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action merely proposes to approve state permitting provisions that are consistent with the CAA and disapprove state permitting provisions that are inconsistent with the CAA; and therefore will have no impact on small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to approve state permitting provisions that are consistent with the CAA and disapprove state permitting provisions that are inconsistent with the CAA.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely proposes to approve state permitting provisions that are consistent with the CAA and disapprove state permitting provisions that are inconsistent with the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 22, 2016.

Ron Curry,
Regional Administrator, Region 6.

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